



NIXON PEABODY LLP
ATTORNEYS AT LAW

NIXONPEABODY.COM
@NIXONPEABODYLLP

Anjali Vohra
Associate
avohra@nixonpeabody.com

Nixon Peabody LLP
799 9th Street NW
Suite 500
Washington, DC 20001-4501
202-585-8000

July 22, 2016

VIA EMAIL AND FIRST CLASS MAIL

The Hon. Karen V. Gregory
Secretary of Federal Maritime Commission
800 North Capitol St.
Room 1046
Washington, D.C. 20573

Re: Docket No. 15-11 – Ovchinnikov v. Hitrinov

Dear Ms. Gregory:

Enclosed for filing in the above-captioned matter are an original true copy and five (5) additional copies of:

1. Respondents' Request to Clarify Their Response to Motion for Extension.

Please contact me if you have any questions.

Best regards,



Anjali Vohra

Enclosures

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 15-11

IGOR OVCHINNIKOV, ET AL

v.

MICHAEL HITRINOV, ET AL

Consolidated With

DOCKET NO. 1953(I)

KAIRAT NURGAZINOV, ET AL

v.

MICHAEL HITRINOV, ET AL

**RESPONDENTS' REQUEST TO CLARIFY THEIR RESPONSE TO MOTION FOR
EXTENSION**

In view of the new revelation by Complainants' Counsel as to his whereabouts (as well as the filing today of a new, as yet unread, pleading by Mr. Kapustin addressing his motion to intervene) Respondents hereby clarify their Response to Complainants' Motion for Extension to say that: (1) they no longer object to the requested extension in light of newly-explained circumstances, and (2) they continue to believe that all other pleadings currently due should be stayed pending resolution of Counsel's status, or at least extended to the same date as the responses on Intervention.

Respondents do not object to the filing of Complainants pleading,¹ even though improperly made as part of a motion rather than as a separate document, as we agree that our Response requested affirmative relief. We do note, however, that Complainants go well beyond the issue of a stay, including an advance installment of the very response to Mr. Kapustin's motion that they ask to postpone.²

1. Respondents Do Not Object to the Requested Extension.

Respondents' first response to the revelation that Mr. Nussbaum is currently in Israel was "who knew?" Certainly, we did not. Complainants' request for consent did not mention Counsel even being out of the office, much less out of the country. Indeed, as previously explained, it gave no reason at all, and Complainants declined to respond to the undersigned's request for the same. Nor was Complainants' motion more informative. One searches in vain for any reference to "Israel" or even that Counsel is *currently* out of the office and not just absent on July 13, the only day referenced in the motion.³

Although Complainants could have obviated all this back and forth by simply providing a more forthcoming initial explanation, now that the mystery is solved Respondents accept Counsel's reasons and withdraw their objection to the request.⁴ We continue to believe,

¹ Respondents also do not raise any formal objection to the scurrilous and untruthful rhetoric employed by Complainants, despite the prior admonishment of the Presiding Officer. While such nonsense would normally be struck as a matter of course, we realize by now that they simply do not know any better.

² While Respondents certainly do not vouch for Mr. Kapustin's honesty or integrity, we are amused by the fact that Complainants' views regarding Mr. Kapustin seem to blow with the wind, or more accurately vary depending on whose ox is gored. Complainants were to all observation indifferent when Respondents long ago submitted the very same judicial opinion as Complainants now trumpet. Moreover, we are bemused at the sight of Counsel attacking his own (former?) client, whom Counsel previously put forward in the EDNY.

³ This apparent mis-impression was further nurtured by Complainants' attestation that the documents were signed in Brooklyn.

⁴ Respondents still wonder how Complainants' Counsel can work on the Record Supplementation due Tuesday and the response thereto due August 2 but not on the Response to Mr. Kapustin's Motion, as to which he is presumably aware of all the relevant facts

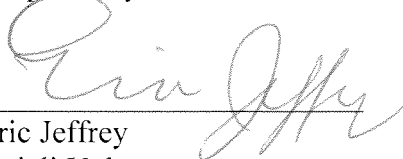
however, that grant of that request should be accompanied by a stay, or at least a co-equal extension, of other due dates.

2. The Proceedings Should be Stayed or Due Dates Extended.

As explained in our original Response, Respondents firmly believe that there is no reasonable way to move forward with this proceeding until the status of Complainants' Counsel is resolved. Complainants do not even attempt to show how it could.⁵ Going forward under such circumstances is obviously unfair to both parties, as well as to the Commission.

Should the Presiding Officer believe otherwise regarding the proposed stay, we believe that the appropriate course would be an extension of other deadlines co-extensive with that granted for the intervention responses. As the Presiding Officer has repeatedly expressed, there are multiple reasons for keeping the deadlines concurrent, including the significant fairness issue. Respondents are very concerned that Complainants will make use of the supplemented record to address matters in the response on intervention that are also (or mainly) relevant to the motion for judgment on the pleadings, thus effectively granting themselves an otherwise improper sur-reply, using information not available to Respondents in framing their Reply.

Respectfully submitted,



Eric Jeffrey

Anjali Vohra

Nixon Peabody LLP

799 9th Street, N.W., Suite 500

Washington, D.C. 20001

(202) 585-8000

⁵ Instead, Complainants simply go on and on about the record supplementation (which they mis-name as discovery). They do not explain why Respondents should be afraid to produce the information, which like the "shipping documents" will support Respondents' position, or why any such imaginary fear would be assuaged by a delay needed to address a critical matter.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the Respondents' Request to Clarify Their Response to Motion for Extension by email and first class mail to the following:

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Marcus.nussbaum@gmail.com

Seth M. Katz, Esq.
P.O. Box 245599
Brooklyn, NY 11224

Date: July 22, 2016


Eric Jeffrey
Counsel for Respondents